

**IN THE INCOME TAX APPELLATE TRIBUNAL
"A" BENCH, MUMBAI**

**BEFORE SHRI N. K. CHOUDHRY, JM &
SHRI GAGAN GOYAL, JM**

I.T.A. No. 2110/Mum/2023
Assessment Year: 2018-19)

Almech Enterprises

113-B, Hubtown Solaris, N.S.
Phadake Marg, Near Khokle Flyover,
Andheri (East), Mumbai-
400069. PAN No.

AAAF1594G

Vs.

ACIT, CC-2(2),

Pratishtha Bhavan, 9th Floor, M.K.
Road, New Marine Lines, ,
Mumbai-400020.

Appellant)	:	Respondent)
Appellant/Assessee by	:	Dr. K. Shivaram Ld. Senior Advocate & Sh. Shashi Bekal, Ld. Adv.
Revenue/Respondent by	:	Sh. Raghuveer Madanappa, Ld. DR
Date of Hearing	:	26.09.2023
Date of Pronouncement	:	27.09.2023

ORDER

Per N. K. Choudhry, JM:

The Assessee/Appellant herein has preferred this appeal against the order dated 02.05.2023 impugned herein passed by Ld. Commissioner of Income Tax (Appeals)-48, Mumbai {in short 'Ld. Commissioner'} u/s 143(3) of the Income Tax Act 1961 (in short 'the Act').

2. In the instant case, as per revenue case, during the course of survey proceedings in the premises of the Assessee, actual cash of Rs. 11,800/- was found as against the cash in hand of Rs. 18,00,312/- which was shown in the books of account and therefore, there was a short fall to the tune of Rs. 17,88,512/-. Consequently the Assessee was show-

caused, as to why such short fall should not be treated as unexplained expenditure within the meaning of the provisions of section 69C of the Act. The Assessee not only failed to reconcile the difference but also failed to provide the requisite details asked for by the AO and therefore, the sum of Rs. 17,88,512/- was treated as unexplained expenditure and consequently added to the total income of Assessee under section 69C of the Act.

3. The Assessee being aggrieved challenged the said addition before the Ld. Commissioner and filed its written submissions challenging the legality of the addition. The Ld. Commissioner upheld the addition of Rs. 17,88,512/- under section 69C of the Act by observing that no evidences were furnished by the Assessee during the assessment order and the appellate proceedings. The onus was on the Assessee to furnish the details/documentary evidences expenses, which the Assessee failed to do so, hence, the addition of Rs. 17,88,512/- under section 69C of the Act is upheld .

4. The question emerge, as to whether on the basis of difference/shortfall between the actual cash found during the course of survey proceedings and the cash shown in the books of account, the addition u/s 69C of the Act is warranted, as made in this case. Dr. K. Shivaram Ld. Senior Advocate emphasized that Hon'ble Allahabad High Court of in the case of CIT vs. Kesarwani Sheetalaya, Allahabad (2019) 110 taxmann.com 415 (All.) also dealt the identical issue, wherein cash in hand in the books of account was found to be more than the actual cash found during the course of search. The Hon'ble High Court affirmed the decision of the Tribunal in holding that would not suffice to make addition under any of the provision under section 69 or section 69A

of the Act. The Hon'ble Co-ordinate Bench of the Tribunal in the case of Sarang & Associates vs. DCIT (ITA No. 1227 to 1229/Mum/2012 decided on 21.03.2018, also dealt with the identical issue and did not approve the making of addition under section 69C of the Act. The Ld. DR Sh. Raghuv eer Madanappa, did not refute the said factual aspect. Hence, respectfully following the judgments referred to above, and considering the peculiar facts and circumstances of the case as the provisions of 69C of the Act are not attracted in this case, in our considered view, the addition is not warranted. Resultantly the same is deleted.

5. In the result, appeal filed by the Assessee stands allowed.

Orders pronounced in the open court on 27-09-2023.

Sd/-
(GAGAN GOYAL)
Accountant Member

Sd/-
(N. K. CHOUDHRY)
Judicial Member

SK, Sr.PS.

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. DR, ITAT, Mumbai
4. Guard File
5. CIT

BY ORDER,

(Dy./Asstt.Registrar)
ITAT, Mumbai

Sr. No.	Details	Date	Initial	Designation
1	Draft dictated on (dictation sheets are attached with main file)	26.09.23		Sr.PS/PS
2	Draft dictated on PC			Sr.PS/PS
3	Draft Placed before author	27.09.23		Sr.PS/PS
4	Draft proposed & placed before the Second Member			JM/AM
5	Draft discussed/approved by Second Member			JM/AM
6	Approved Draft comes to the Sr.PS/PS			Sr.PS/PS
7	Order pronouncement on			Sr.PS/PS
8	File sent to the Bench Clerk			Sr.PS/PS
9	Date on which the file goes to the Head clerk			
10	Date on which file goes to the AR			
11	Date of Dispatch of order			